

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

DARRELL WHITE, II, #1959082,

Petitioner,

v.

ACTION NO. 2:23cv280

CHADWICK DOTSON,¹
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

Petitioner Darrell White, II (“White”), a Virginia inmate proceeding *pro se*, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 (“Petition”).² ECF No. 1. White challenges his convictions in the Circuit Court for Southampton County in May 2019 for five counts of sodomy of a victim under thirteen years old and three counts of aggravated sexual battery of a victim under thirteen years old. Petition at 1, ECF No. 1; *Commonwealth v. White*, Nos. CR 18000156-00–CR18000160-00, CR18000164-00–CR18000166-00 (Va. Cir. Ct. May 21, 2019). Respondent filed a motion to dismiss the Petition, and White responded to the motion. ECF Nos. 18, 23.

¹ It is ORDERED that the Petition shall be deemed amended to substitute as the sole respondent in this proceeding Chadwick Dotson, Director of the Virginia Department of Corrections. *See* Rule 2 of Rules Gov. § 2254 Cases in U.S. Dist. Cts.

² White mistakenly used the form for a petition pursuant to 28 U.S.C. § 2241. *See* ECF No. 1. White is a state prisoner challenging his conviction and sentence in state court. Accordingly, his Petition is treated as one brought pursuant to 28 U.S.C. § 2254.

This matter was referred to the United States Magistrate Judge pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. On April 22, 2024, the Magistrate Judge prepared a Report and Recommendation, recommending that Respondent's Motion to Dismiss be granted and that the Petition for a writ of habeas corpus be denied and dismissed with prejudice as barred by the statute of limitations. R. & R. at 1, 3–7, ECF No. 25. Each party was advised of the right to file written objections to the findings and recommendations made by the Magistrate Judge. *Id.* at 7. On April 29, 2024, the Court received White's objections. ECF No. 26.

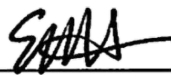
The Court, having reviewed the record and examined the objections filed by White to the Report and Recommendation, and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report and Recommendation. The Court, therefore, ORDERS that Respondent's Motion to Dismiss, ECF No. 18, is GRANTED, and the Petition for a writ of habeas corpus, ECF No. 1, is DENIED and DISMISSED WITH PREJUDICE as barred by the statute of limitations.

Finding that the basis for dismissal of White's section 2254 Petition is not debatable, and alternatively finding that White has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is DENIED. 28 U.S.C. § 2253(c); *see* Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts.; *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

White is ADVISED that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. R. App. P. 22(b); Rule 11(a) of the Rules Gov. § 2254 Cases in U.S. Dist. Cts. If White intends to seek a

certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. White may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.

The Clerk shall forward a copy of this Final Order to White and counsel of record for respondent.



/s/ Elizabeth W. Hanes
United States District Judge

Elizabeth W. Hanes
United States District Judge

Norfolk, Virginia
June 3, 2024